

JULY 2ND, 1913.

RICE v. SOCKETT.

Contract—Work and Labour—Construction of Silo—Action for Price—Defective Work—Finding of Trial Judge on Conflicting Evidence—Appeal—Counterclaim—Damages for Loss of Crop for Want of Silo—Contemplation of Parties—Evidence—Quantum of Damages.

Appeal by the plaintiff from the judgment of the County Court of the County of Wellington dismissing an action in that Court, and allowing the defendant \$96 on his counterclaim.

The judgment appealed from was upon the second trial of the action; the judgment on the first trial having been set aside and a new trial directed by a Divisional Court: *Rice v. Sockett* (1912), 27 O.L.R. 410, ante 397.

The second appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

R. L. McKinnon, for the plaintiff.

J. J. Drew, K.C., for the defendant.

The judgment of the Court was delivered by MAGEE, J.A.:—
The amount involved in the plaintiff's claim for construction of a concrete circular silo is \$180. The plaintiff was to furnish the cement and doors and do the work. The defendant was to provide the gravel and stone and water. The plaintiff admits that he was to do a first-class job, so far as his own material and the workmanship were concerned.

The defendant alleges that the work is very rough and defective, the concrete improperly mixed so that it does not form a hard, solid wall, and has in many places so little binding that it readily disintegrates, and it would be unsafe to use. He also alleges that two of the series of horizontal reinforcing rods, which were to go entirely round the silo at different heights and to have the ends hooked together and to be imbedded in the cement, do not go around, but stop at the sides of two doors or openings, and, consequently, the ends are not hooked together and do not meet, but are merely bent and anchored in the cement.

It is unnecessary to enter into the question whether, as to these two rods, the failure to fasten them together was owing to a change made, at the defendant's request, in the height of